

## § 251.98

grant an oral presentation if the appellant requested the presentation as part of the notice of appeal.

(c) *Participation.* At the discretion of the Reviewing Officer, oral presentations may be open to public attendance, but participation is limited to parties to the appeal. The Reviewing Officer shall advise all parties to the appeal, including the Deciding Officer, of the place, time, and date of the oral presentation, and how the oral presentation will be conducted. All parties to an appeal shall be invited to participate. Appellants and intervenors must bear any expense involved in making an oral presentation in person or by telephone.

(d) *Limitation.* Oral presentations shall be held only at the first level of appeal (§ 251.87(b)).

## § 251.98 Appeal record.

The following rules apply only to the appeal record for appeals at the first level (§ 251.87 (a), (b)):

(a) It is the responsibility of the Reviewing Officer to maintain in one location the documents related to the appeal.

(b) The record consists of the documents filed with the Reviewing Officer including, but not limited to, the notice of appeal, responsive statement, replies to submissions by various parties to the appeal, orders and determinations made on the conduct of the appeal, and correspondence.

(c) The Reviewing Officer has discretion to remove from the record documents that were not sent to all parties to an appeal.

(d) Unless the Reviewing Officer has ordered otherwise, the appeal record closes with the expiration of the time period for filing of the reply(ies) to the responsive statement, or at the conclusion of an oral presentation, if there is one. The Reviewing Officer shall notify all parties to an appeal of the closure of the record.

(e) The appeal record is open to public inspection.

(f) In appeals involving initial decisions of the Chief (§ 251.87(a)), the establishment of an administrative record as defined in paragraph (a) of this section shall not begin unless the Secretary elects to review the appeal.

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Except for the initial notice of appeal, any filings made previous to the Secretary's election to review will not be accepted.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

## § 251.99 Appeal decision.

(a) The Reviewing Officer shall base the appeal decision on the appeal record and applicable laws, regulations, orders, policies, and procedures.

(b) The Reviewing Officer shall affirm or reverse the original decision whole or in part and include the reason(s) for the decision. The Reviewing Officer may also include in the appeal decision instructions for further action by the Deciding Officer.

(c) At the first level of appeal, the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is closed.

(d) At the second level of appeal provided in § 251.87(c), the Reviewing Officer shall make and issue an appeal decision within 30 days of the date the record is received from the first level Reviewing Officer.

(e) The Reviewing Officer shall send a copy of all appeal decisions to all participants.

(f) Unless the next higher officer exercises the discretion to review an appeal decision as provided in §§ 251.87(e) and 251.100 of this subpart, the appeal decision is the final administrative decision of the Department of Agriculture and is not subject to further review under this subpart or part 217 of this chapter.

[54 FR 3362, Jan. 23, 1989, as amended at 54 FR 34510, Aug. 21, 1989]

## § 251.100 Discretionary review.

(a) Petitions or requests for discretionary review shall not, in and of themselves, give rise to a decision to exercise discretionary review. In electing to exercise discretion, a Reviewing Officer should consider, but is not limited to, such factors as controversy surrounding the decision, the potential for litigation, and whether the appeal decision is precedential in nature or establishes new policy.

(b) As provided for in §§ 251.87(d) and (e), 251.91(k), and 251.92, stay decisions